

# Memorandum

To: Docket 04-IEP-1

Date : November 22, 2004

Telephone:

From : **California Energy Commission**  
1516 Ninth Street  
Sacramento CA 95814-5512

Subject: **Additional Guidance on Confidentiality Procedures for the 2005 Energy Report**

Earlier this month, I issued a memo providing guidance on the Energy Commission's process for determining whether data is entitled to confidential treatment as well as our procedures for handling confidential data. The Commission's regulations are silent on what happens to data when the Executive Director determines that the data should not be designated as confidential and the party submitting the data disagrees with that determination. Under SB 1389, the Commission has a clear legal basis in the *2005 Integrated Energy Policy Report* proceeding to compel "submission of demand forecasts, resource plans, market assessments, and related outlooks from electric and natural gas utilities, transportation fuel and technology suppliers, and other market participants...." (Pub. Res. Code 25301(a).) For this reason, the Commission will not return information that has been filed with an application for confidentiality if the Executive Director decides not to designate the information as confidential.

Parties retain the right, as described in the initial memo, to appeal the Executive Director's decision to the full Energy Commission. The applicant has fourteen days from the date of the Executive Director's decision to file an appeal with the full Energy Commission, which is required to issue a decision on the appeal within four weeks of the appeal being filed. (Cal. Code Regs., tit. 20, sec. 2505 (a)(3)(B).) In addition, a ruling by the Commission itself is subject to court appeal. *In keeping with applicable laws and regulations, the Energy Commission will maintain any such information as confidential while any appeals are pending. Prior to the completion of the appeals process, information will only be released if it has been masked or aggregated to the point necessary to protect confidentiality*

Parties are reminded that each application will be evaluated on a case-by-case basis, and that the Energy Commission has in place appropriate procedures for ensuring that information deemed to be confidential or still being reviewed for confidentiality, including during any appeals process, will be protected. Questions relating to the Commission's confidentiality procedures can be directed to Fernando De Leon, Senior Staff Counsel, at (916) 654-4873, or by email at [Fdeleon@energy.state.ca.us](mailto:Fdeleon@energy.state.ca.us).

Sincerely,

/s/

ROBERT L. THERKELSEN  
Executive Director